



October 21, 2008

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW – A325
Washington, DC 20554

Re: WT Docket Nos. 07-195, 04-356, Notification of Written Ex Parte Presentation

Dear Ms. Dortch:

M2Z is a strong proponent of creating opportunities for new entrants and competitors in the broadband market in order to provide consumers greater choice and lower prices. M2Z and a number of rural carriers and broadband paging carriers also have advocated a new approach for fostering broadband roaming for rural carriers and local ISPs, proposing the creation of an advanced national broadband network using the under-utilized AWS-3 band. M2Z believes that establishing AWS-3 service rules that promote new entry and additional roaming opportunities will significantly advance the public interest. Furthermore, M2Z and other commenters also have demonstrated that the Commission must ensure that the AWS-3 spectrum is not subject to predatory bidding designed to thwart competition. For this reason, M2Z and others have proposed the use of eligibility criteria that would encourage new broadband entry using this spectrum. This letter both highlights and expands on previous comments in the AWS-3 proceeding on these issues.

AWS-3 Can Be Used to Promote New Entry and Prevent Warehousing

Consistent with M2Z's and other parties' previous statements in the AWS-3 proceeding,¹ M2Z respectfully submits that the auction for the AWS-3 band must be designed to prohibit the participation of incumbent wireless broadband carriers.² This prohibition is necessary in order to prevent these

¹ See, e.g., NPRM Comments of Minority Media and Telecommunications Council and Rainbow PUSH Coalition, WT Docket No. 07-195 (filed Dec. 14, 2007); NPRM Reply Comments of Broadband Wireless Partners, WT Docket No. 07-195, at 6 (filed Jan. 14, 2008); FNPRM Comments of American Association of Paging Carriers, WT Docket Nos. 07-195 and 04-356, at 1-2 (filed July 25, 2008) ("AAPC FNPRM Comments"); FNPRM Reply Comments of Broadband Wireless Partners, WT Docket Nos. 07-195 and 04-356, at 9 (filed Aug. 11, 2008).

² There have been multiple proposals submitted in the AWS-3 proceeding suggesting certain eligibility restrictions. See, e.g., AAPC FNPRM Comments at 5-9 (suggesting exclusion of Tier I and Tier II broadband CMRS licensees, as well as

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carriers from engaging in predatory bidding, as they did in the AWS-1 and 700 MHz proceedings, to preclude new competition.³

Encouraging the Participation of Diverse Parties Interested in the AWS-3 Spectrum Band Through Adoption of a New Entrant Requirement Will Spark Greater Interest

Limiting the participation of incumbent carriers in the AWS-3 auction will engender important public policy benefits. Specifically, eligibility requirements that promote new entry likely will result in a number of new types of players participating in the auction. The recent Canadian AWS-1 auction is instructive on this point. That auction commenced in May 2008 and involved the same AWS blocks that were auctioned in the U.S. in 2006. The Canadian rules included progressive provisions to set aside for new entrants 3 of the 6 blocks (accounting for 40% of the available spectrum).⁴ These actions were designed to promote competition and revolutionize the Canadian wireless marketplace, in an environment in which only about 60 percent of Canadians subscribe to a wireless mobile services.⁵ In the end, a number of new potential wireless carriers (ranging from startups backed by financial entities to power companies) participated in the bidding for the new entrant blocks, leading to a four-

affiliates of such licensees, from eligibility for the nationwide AWS-3 license); Broadband Wireless Partners FNPRM Reply Comments at 9 (same); NetfreeUS, LLC FNPRM Comments at 9 (filed July 25, 2008) (proposing a closed auction “open only to those seven applicants that submitted applications for the 2155-2175 MHz band on or before March 2, 2007.”); Joint *Ex Parte* Letter of the Minority Media and Telecommunications Council and the Hispanic Telecommunications and Technology Partnership, WT Docket Nos. 07-195 and 04-356, at 1 (filed June 3, 2008) (proposing that the AWS-3 auction “be opened only to new nationwide entrants that do not hold terrestrial spectrum licenses (including ATC authority).”); see also Comments of the Rural Telecommunications Group, Inc., WT Docket Nos. 07-195 and 04-356, at 11-12 (filed July 24, 2008) (proposing 110 megahertz spectrum aggregation limit for all spectrum below 2.3 GHz, including AWS-3, to combat increasing consolidation in wireless marketplace); National Telecommunications Cooperative Association Initial Comments, WT Docket Nos. 07-195 and 04-356, at 5 (filed July 25, 2008) (proposing spectrum caps to prevent largest wireless carriers from getting larger).

³ See, e.g., FNPRM Reply Comments of Dr. Gregory Rose, WT Docket Nos. 07-195 and 04-356, at 33-39 (filed Aug. 11, 2008); Letter from Richard S. Whitt, Google, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 06-150, PS Docket 06-229, and WT Docket 96-86 (filed July 23, 2007).

⁴ See *Licensing Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, Gazette Notice DGRB-011-07, (Dec. 2007) available at [http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/awslicensing-e.pdf/\\$FILE/awslicensing-e.pdf](http://www.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/awslicensing-e.pdf/$FILE/awslicensing-e.pdf); see also News Release, Industry Canada, “Government of Canada Opens Up Wireless Industry to More Competition” (May 27, 2008) (“Industry Canada May Release”), available at <http://www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256a5d006b972085257456004d567b!OpenDocument>. Industry Canada also mandated that existing carriers share towers and roaming spectrum in order to give new entrants an opportunity for achieving scale.

⁵ See, e.g., Canadian Wireless Telecommunications Association, “Canada’s Wireless Industry: A Global Success Story Continues,” (last visited Oct. 17, 2008), <http://www.cwta.ca/CWTASite/english/index.html> (noting that as of the end of March 2008, “Canadian wireless phone subscribers numbered 20.1 million, representing a national wireless penetration rate of 62%”); see also Industry Canada May Release (quoting Minister of Industry Jim Prentice statement that “[o]ur government’s intentions are clear: to achieve lower prices, better service and more choice for consumers and business”).

fold increase in the expected revenues from that auction.⁶ At the conclusion of the auction, Minister of Industry Jim Prentice stated: “The auction exceeded our expectations in terms of the level of competitive bidding activity. I hope the industry keeps this competitive spirit alive as it enhances and expands its services with improved access to the spectrum.”⁷

If the Commission conducts the AWS-3 auction soon, M2Z is confident — and the level of participation in this proceeding further illustrates — that there is a high level interest in the band from a diverse set of potential licensees, many of whom also would be interested in providing free broadband services. When the Commission initially placed M2Z’s original application on public notice in January 2007, six different companies filed potentially mutually exclusive applications expressing an interest in the AWS-3 band, and at least four of these potential licensees are publicly traded entities with multiple sources of revenue and financing.⁸ Thus, conducting a new entrant auction, as Canada did earlier this year, would promote new entry and encourage auction results that differ significantly from the 700 MHz auction, in which two nationwide incumbents acquired the lion’s share of the available spectrum.

Rural Carrier Interest in Promoting Nationwide Broadband in AWS-3

The potential of facilitating entry in the AWS-3 band by a new, unaffiliated nationwide broadband competitor has sparked the interest of a number of rural carriers and paging providers. These entities are enthused by the possibility that this new network could provide them with an alternative broadband roaming solution, which would allow rural carriers and paging providers to offer

⁶ See, e.g., David George-Cosh, “Wireless auction raises \$4.25 billion; About 300 licenses up for grabs. Canadians will have up to five more firms to choose from in each province, territory,” *Montreal Gazette*, July 22, 2008, at B2; David George-Cosh, “Wireless Users Stand to Win; Bidding Ends; New choices to emerge in cellphone market,” *National Post*, July 22, 2008, at A1; see also CIBC World Markets, “AWS Auction Finally Ends – \$4.25B Is A Big Tally,” at 4 (July 21, 2008) (“The set-aside spectrum [for new entrants] was, in our opinion, one of the key factors that led to the high level of competitive bidding (and hence, higher prices), luring in bidders that would have otherwise not participated in the auction.”).

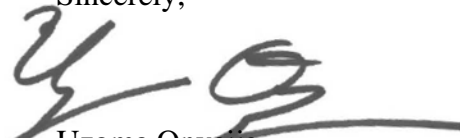
⁷ News Release, Industry Canada, “15 Companies Bid Almost \$4.3 Billion for Licences for New Wireless Services” (July 21, 2008), available at <http://www.ic.gc.ca/cmb/welcomeic.nsf/261ce500dfcd7259852564820068dc6d/85256a5d006b97208525748d005fa34e!OpenDocument>

⁸ See, e.g., Application of Open Range Communications, Inc., WT Docket Nos. 07-16 and 07-30 (filed Mar. 1, 2007); Application of NetfreeUS, LLC, WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007); Application of Commnet Wireless, LLC, WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007); Application of NextWave Broadband, Inc., WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007); Application of OPEN RANGE Communications, Inc., WT Docket Nos. 07-16 and 07-30 (filed Mar. 1, 2007); Application of McElroy Electronics Corporation., WT Docket Nos. 07-16 and 07-30 (filed Mar. 2, 2007); Application of TowerStream Corporation, WT Docket Nos. 07-16 and 07-30 (filed Mar 15, 2007). Consistent with the Commission’s proposal to establish free nationwide “lifeline” broadband access, several applicants for the AWS-3 license declared that they would offer services either for free or at low cost. See, e.g., Commnet Application, Exh. 2, at 2; Netfree Application at 2; Open Range Application at 7; McElroy Electronics Application at 2 and 9.

better service to their own customers.⁹ In light of the Commission's 2007 roaming report and order limiting the availability of automatic roaming for broadband, M2Z notes that several rural carriers, paging companies, and local ISPs have expressed a great deal of concern about their ability to provide roaming for their customers outside of their home markets on a fairly negotiated basis. The availability of a new, advanced technology broadband network in the AWS-3 band would greatly enhance these parties' opportunities to expand their portfolio of services and the reach of their broadband networks. According to the filings made by several of these parties in the record of this proceeding, a mandatory wholesale requirement for the network and the designation of the AWS-3 band for a new entrant would provide viable alternatives for broadband roaming.¹⁰

Thank you for your consideration of these matters. Pursuant to Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed. Please let me know if you have any questions regarding this submission.

Sincerely,



Uzoma Onyeije

cc: Charles Mathias
Bruce Gottlieb
Renée Crittendon
Wayne Leighton
Angela Giancarlo

⁹ See "M2Z Networks Announces Wholesale Partnerships with Rural Telephone Companies," available at <http://www.m2znetworks.com/xres/uploads/documents/M2Z%20Press%20Release%209-17-07.pdf> (rel. Sept. 17, 2007).

¹⁰ See, e.g., AAPC FNPRM Comments at 1-2, 5; NPRM Reply Comments of Broadband Wireless Partners at 3.